

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 439

FISCAL
NOTE

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JEFFRIES

[Introduced January 25, 2019; Referred
to the Committee on Economic Development; and then to
the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-28-1, §11-28-2, and §11-28-3, all relating to creating five-year tax credits
 3 for persons engaged in industrial hemp manufacturing; setting eligibility requirements for
 4 tax credit; establishing amount of tax credit allowed; establishing how the credit may be
 5 applied; and authorizing rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. INDUSTRIAL HEMP DEVELOPMENT TAX CREDIT.

§11-28-1. Definitions.

1 For purposes of this article:
 2 “Industrial hemp” means all parts and varieties of the plant cannabis sativa L. containing
 3 no greater than one percent tetrahydrocannabinol.
 4 “Industrial Hemp Manufacturing” means using industrial hemp grown in this state to
 5 manufacture consumer products.

§11-28-2. Eligibility for credit.

1 For those tax years beginning on or after January 1, 2020, a person engaged in industrial
 2 hemp manufacturing will be allowed a credit against certain taxes imposed by this chapter, as
 3 described in §11-28-3 of this code, if the person engaged in industrial hemp manufacturing meets
 4 the following requirements:

- 5 (1) The entity is a corporation, small business corporation, limited liability company,
 6 partnership, or unincorporated business entity with a principal place of business in the state; and
- 7 (2) Manufactures consumer products from industrial hemp grown by persons licensed by
 8 the Commission of Agriculture pursuant to §19-12E-1 et seq. of this code;

§11-28-3. Application of credit.

1 (a) Amount of credit. — For those tax years beginning on or after January 1, 2020, an
 2 eligible person engaged in industrial hemp manufacturing is allowed a tax credit in the amount of
 3 50 percent of the person’s capital expenditures (as defined in Section 263 of the United States

4 Internal Revenue Code of 1986, as amended) for the first five taxable years. The dollar amount
5 of the credit claimed by an eligible person engaged in industrial hemp manufacturing may not
6 exceed the amount of 50 percent of the entity's state income tax for a single year.

7 (b) Application of annual credit allowance. — The credit created by this article is allowed
8 as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) and (2)
9 of this subsection, and in that order.

10 (1) Corporation net income taxes. — Any credit is first applied to reduce the taxes imposed
11 by §11-24-1 et seq. of this code for the taxable year.

12 (2) Personal income taxes. — After application of subdivision (1) of this subsection, any
13 unused credit is next applied as follows:

14 (A) If the person making the qualified investment is an electing small business corporation
15 (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended),
16 a partnership or a limited liability company that is treated as a partnership for federal income tax
17 purposes, then any unused credit is allowed as a credit against the taxes imposed by §11-21-1
18 et seq. of this code on the income from business or other activity subject to tax under §11-23-1 et
19 seq. of this code.

20 (B) Electing small business corporations, limited liability companies, partnerships, and
21 other unincorporated organizations shall allocate the credit allowed by this article among its
22 members in the same manner as profits and losses are allocated for the taxable year.

23 (3) A credit is not allowed under this section against any employer withholding taxes
24 imposed by §11-21-1 et seq. of this code.

25 (c) Unused credit. — A carryback to a prior taxable year is not allowed for the amount of
26 any unused portion of any annual credit allowance. If the amount of the credit exceeds the
27 taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be
28 carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1
29 et seq. or §11-24-1 et seq. of this code to each of the next five taxable years following the year of

30 creation of the tax credit unless sooner used.

31 (d) Eligibility requirements. — Those businesses that benefit from other state economic
32 development programs or incentives that result in a reduction of their income tax liability due are
33 not eligible for this tax credit.

34 (e) Rule-making authority. — The State Tax Division may propose rules for promulgation
35 by the Legislature in accordance with §29A-3-1 et seq. of this code necessary to implement the
36 provisions of this article.

NOTE: The purpose of this bill is to create five-year tax credits for persons engaged in industrial hemp manufacturing. The bill establishes eligibility requirements for the tax credit and the amount of tax credit allowed.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.